

17.04.00.00 - SPECIAL FUNDED PROJECTS (ON-SYSTEM PROJECTS)

17.04.01.00 Special Funded - Background

Special Funded Projects are on the State Highway System (SHS), within the existing or proposed right of way, with construction costs greater than \$1,000,000. Some examples of special funded projects and their funding sources are described below.

17.04.01.01 Sales Tax/Measure Projects

In the late 1980s, a series of legislative acts were passed which authorized counties to adopt ballot measures to increase sales taxes by up to 1%, with the proceeds to be used for transportation purposes. Other legislation authorized the issuance of bonds to finance capital outlay expenditures, with the bonds to be repaid from the sales tax proceeds. The Legislature intended then and now that local entities supplement their revenues to demonstrate a commitment to local or regional transportation projects by generating their own funds. In most cases, the ballot measure specified which projects would be financed. These projects are identified in an approved Sales Tax Measure Expenditure Plan or Strategic Plan, are funded 50% or more from local sales tax revenues, and have no funding in the state programming documents.

As the owner-operator of the SHS, the Department is *usually* responsible for performing and funding all project development work through the environmental document and project approval phase. The sponsor is responsible for performing and funding project development, right of way, and construction at its expense. If the Department is unable to meet the sponsor's schedule, the sponsor may assume the responsibility for the preparation of all project development work with the appropriate oversight to be provided by Department.

If requested by the sponsor, the Department may perform some of the services for which the sponsor is responsible on a reimbursed basis—if Department has sufficient reimbursed budget authority. When the Department does work on a reimbursed basis, an Agreement is required to provide for the reimbursement. (See Section 17.04.05.04, "Capital Support Reimbursed Work," and Section 17.07.00.00, "Cooperative Agreements.")

17.04.01.02 Locally Funded Projects

These types of projects are sponsored by a public agency. The funding sources may include impact mitigation fees charged to private developers; funds derived from assessment districts; contributions from private developers; the LPA's share of their gas tax funds; federal funds; and, finally, local property taxes. Owners or developers of property adjacent to or near the SHS can use their own funds to construct, repair, or improve any portion of the highway. Some of these projects are undertaken to mitigate impacts or to improve access to the development. The Department's role in this type of project is limited to oversight responsibility.

17.04.01.03 Partnership Projects

Either the Department or a public agency sponsors this type of project. There is a variety of funding sources which may include tax measure proceeds, local, state or federal monies, and direct contributions to the local agency from developers. The Department may be only a financial contributor, but may also be responsible for certain aspects of the projects such as construction management. Roles, responsibilities, and funding obligations must be defined in one or more Cooperative Agreements, regardless of the amount contributed by the project sponsor or the Department. For projects where the Department is performing project development, right of way, or construction support, the project sponsor shall reimburse Department for its support costs in the same proportion as the project sponsor's share of the total project capital costs unless other equitable arrangements are specified in the Cooperative Agreement. (For additional detail, see Section 17.07.00.00, "Cooperative Agreements.")

17.04.01.04 **Privately Funded Projects**

These are defined as projects on the SHS, which are sponsored by a private, nonpublic entity and have no funding in a state programming document. When a new, privately funded project is proposed, a decision must be made in designating the project sponsor. The Department strongly encourages LPAs to sponsor privately funded projects to demonstrate community acceptance of the project and to improve coordination with other local agencies. If a proposed privately funded project is sponsored by an LPA, it will then be processed as a locally funded project. If an LPA does not sponsor the project, the Department will work directly with the private sponsor. As the owner-operator responsible for assessing the impact of new projects on the existing SHS, the Department is responsible for the preparation of the PSR at Department's expense. It is the responsibility of the private sponsor to provide suitable engineering data, as well as technical and financial information needed for the Department to prepare the PSR. The private sponsor may prepare and submit a draft PSR, at its own expense, to expedite the project development process. The sponsor is responsible for performing all subsequent project development, right of way, and construction activities, with the Department providing oversight at the private project sponsor's expense. A Highway Improvement Agreement accompanied by an Escrow Agreement, if applicable, will be required for all privately funded projects.

17.04.01.05 **Public Toll Roads**

These projects use locally generated funds to build toll roads, which will ultimately be part of the SHS. The toll revenues are used to reimburse the costs in constructing the facilities.

17.04.01.06 **Private Toll Roads**

In 1989, legislation was passed authorizing the Department to enter into partnership with private developers to design, build, and operate four unspecified toll roads as demonstration projects. The developers will recover their investment through tolls and land development revenues.

17.04.01.07 **Encroachment Permits Projects**

Although they are not considered "special funded" in the regular sense, Encroachment Permit projects are discussed here as a subcategory because they are located on the SHS. These projects are sponsored by an LPA, a local tax measure authority, or a private entity with construction costs of \$1,000,000 *or less* within the existing or future right of way. The Encroachment Permit process ensures that local projects are compatible with highway use and safety and protect the highway. All proposed projects must conform to Department standards and practices for planning, design, right of way acquisition/certification, and construction. Such projects will also follow established state policy and procedures for encroachment permits, including the preparation of the Permit Engineering Evaluation Report (PEER) or any other appropriate report, such as a Combined Project Study Report/Project Report (PSR/PR).

A Cooperative Agreement or a Highway Improvement Agreement is occasionally required for Encroachment Permit projects. These projects could include signal, landscaping, and noise barrier construction. The state representative responsible for overseeing the project construction will be provided by the Construction Unit if construction cost exceeds \$300,000. Either the Construction Unit or the Permits Unit may oversee projects with construction costs of \$300,000 or less.

NOTE: Encroachment permits for all special funded projects with construction costs of *more* than \$1 million are part of the project development process and are covered in a Cooperative Agreement or a Highway Improvement Agreement. All Special Funded projects require an encroachment permit whenever the project sponsor, its consultants, or its contractors propose work within the existing State highway right of way. Permits for LPA or privately sponsored projects with *less* than \$1 million in construction costs follow the standard review process for granting encroachment permits. All Permit projects with right of way issues should be carefully reviewed by the appropriate District Right of Way staff.

For a complete description of the permit process, refer to the *Encroachment Permit Manual* issued by Traffic Operations and Section 9.6 of the *Procedures Manual for Special Funded Projects*.

17.04.02.01 **Special Funded Procedures - General**

Special funded projects on the SHS continue to proliferate throughout the state. On these projects, after construction is complete and the project is accepted, the Department remains responsible for operations and maintenance and retains tort liability, which explains why there is such a comprehensive level of involvement. All SHS projects must be developed in accordance with Department standards and practices, including planning, design, right of way acquisition, and construction.

Background and guidelines for these projects are found in Deputy Directive 23 (DD-23), “*Developing Special Funded Projects*,” dated June 28, 1994. (See Exhibit 17-EX-7.)

17.04.02.02 **Project Estimates**

One of the initial objectives in successfully developing special funded projects is obtaining an accurate cost estimate for the Right of Way portion of the project. The reliability of estimates for project costs at every stage in the development process is necessary for sound project management. For special funded projects where the Department is responsible for preparation of the Right of Way Data Sheet, the Region/District’s R/W Estimating units are often called on to provide cost estimates with little lead time and with only very preliminary studies available. As the project design is progressively refined, alignment changes routinely occur with widespread and consequential impacts. Accordingly, when establishing right of way widths, initial consideration should always be given to the need for maintenance access, drainage, noise barriers, material sites, construction work areas, etc.

Estimates, even at an early stage, are often viewed as a Department financial commitment by LPAs that use the data to develop their project’s budget. In the case of tax measure initiatives, project sponsors do not have the option of raising additional funds if there are cost increases and are consequently left with a serious shortfall of funds and/or the need to reduce the number or size of their projects during the life of the tax measure. This can become a very critical and sensitive issue. It is therefore very important that estimates are made with care and are based on the best information available at the time.

When LPAs are preparing their own project estimates, the Local Programs Coordinator should provide assistance whenever possible. For additional detail, refer to Chapter 4, “Estimating,” in this Manual.

17.04.02.03 **STIP Requirements**

Special funded projects, prior to authorization to proceed with project development, should have an approved PSR, environmental clearance and, as applicable, be included in the STIP. During development of each STIP cycle, the Regional Transportation Improvement Plans (RTIPs) should incorporate locally funded projects where a concept has been agreed on and there is a firm funding commitment by a resolution or other documentation from the LPA even if they are not included in the STIP. Special funded project costs in the STIP include all Department project support costs for each of the following four components:

1. All permits/environmental studies;
2. Preparation of the PS&E;
3. Right of Way Acquisition; AND
4. Construction/construction management, engineering (including surveys and inspections).

If the Department and an LPA agree, they may recommend that a new special funded project will be jointly funded. In this case, the LPA will nominate its share in the RTIP and the Department will nominate the interregional share in the ITIP.

17.04.02.04 PMCS and XPM Requirements

All special funded projects on the SHS must be included in the District's database, whether PMCS or XPM, even if they are not included in the STIP. The Department *or* LPA Data Sheet is the source from which resources are entered into PMCS via the COST screens.

NOTE: Failure to include all special funded projects will result in the Local Program's oversight PYs being underallocated.

PMCS and XPM databases must also be regularly updated to reflect the project's current status, e.g., workload, production, or scheduling changes. This is crucial to ensure the oversight PYs are properly budgeted.

17.04.02.05 Support Budget for Special Funded Projects

In preparing a support budget for work on Special Funded projects, a Region/District must plan for activity in two general areas:

1. The Region/District's support budget must include effort performed in preparation of the PSR, the environmental document, oversight, project certification, and general advice and assistance for LPAs undertaking the projects. These estimates must be considered in light of the Region/District's experience with acquiring agencies as to the degree of oversight and assistance necessary to certify projects. The Region/District must properly flag LPA projects so that budget personnel can identify the resources needed. The projects' PMCS Cost Screen should reflect full right of way effort as though Right of Way was doing the work. As a general rule of thumb, Right of Way oversight or contract administration is estimated at 10% of total PY effort. The Right of Way Coordinator must maintain close liaison with the unit developing special funded projects, whether it is the DLAE or Project Development staff to obtain the latest estimates of the type and number of projects expected.
2. In Regions/Districts where reimbursed work is performed, the costs must be specifically budgeted before the work may be undertaken. (See Sections 17.04.05.04, "Capital Support Reimbursed Work," and 17.04.05.05, "Reimbursed Supervision.")

17.04.02.06 Project Report/Project Study Report (PR/PSR)

The Project Report (PR) and Project Study Report (PSR) are essentially feasibility studies, which develop both the project's scope and schedule. These documents identify alternate proposals for the project and contain preliminary analyses of the costs, impacts, and requirements. They also detail a crucial element: whether the project results in significant capacity improvement, which is defined as either an increase in capacity more than two miles long or the construction of a major freeway-to-freeway interchange. The combined PR/PSR was designed for noncomplex, noncontroversial projects.

For tax measure projects, Right of Way participates in the preparation of the PSR as part of the project development team and by producing a R/W Data Sheet which contains the estimated R/W capital outlay requirements for the project, as well as an estimate of the amount and type of work to be performed.

17.04.02.07 **FHWA Role - Mixed Funding**

Special funded projects can have a mixture of funding, including both state and federal as part of the LPA's share. When projects utilize federal funding for right of way acquisition or construction or when modifications are made to an Interstate freeway in which FHWA has already participated, FHWA approval is necessary. All federally funded projects on the NHS must be approved by FHWA. All Special Funded projects where federal funds are used must comply with the procedures contained in Section 17.03.00.00.

17.04.02.08 **NEPA/CEQA**

All special funded projects must comply with the California Environmental Quality Act (CEQA). Any project where Federal-aid funds are used must comply with the National Environmental Quality Act (NEPA).

17.04.02.09 **Hazardous Waste Studies**

All transportation projects on the SHS require the investigation and avoidance, if possible, of any exposure to hazardous waste products. Examples of hazardous waste include petroleum products, pesticides, organic compounds, heavy metals, or other compounds that are injurious to human health or the environment. All projects which include the purchase of right of way, excavation, or the demolition/modification of structures will require at a minimum an Initial Site Assessment to determine if any known or potential hazardous waste exists within the project area. The Department's hazardous waste policy and procedures are set forth more fully in Chapters 8, "Acquisition," and 12, "Clearance and Demolition," of this Manual, and Chapter 3-30 of the *Project Development Procedure Manual*.

17.04.03.01 **Advance Right of Way Activities**

In order to avoid loss of federal funds as well as ensure project approval, regular right of way acquisition activities (a written offer) must not be conducted by an LPA on a proposed project prior to completion of the environmental process. The LPA may, however, commence "regular" project appraisals if the following has occurred: (1) the draft environmental document must have been circulated, (2) the public hearing process completed, (3) a preferred alternative has been approved, and (4) the project is not controversial. This policy is necessary to avoid any possible allegations of such acquisitions predetermining the proposed project location and design alternatives.

In all instances, preliminary regular right of way activities that can be performed are those necessary for completion of the environmental impact assessment and preparation for public hearings. If the project does not meet the criteria stated above, "regular" appraisals cannot commence nor should the property owner be contacted. Activities that can be performed are limited to obtaining general appraisal information for later appraisals as well as work on relocation assistance studies and preliminary utility relocation efforts up to the issuance of the Notice to Owner to Relocate.

17.04.03.02 **Advance Acquisitions**

Some limited acquisitions may take place prior to completion of environmental and hearing requirements. These acquisitions may include the following, which are also discussed in the Acquisition Chapter in this Manual. It is emphasized that each type of acquisition described below may only take place prior to environmental approval and location selection if:

- The LPA shows compliance with applicable acquisition rules. (For details, refer to Chapter 8, "Acquisition," in this Manual.)
- Advance acquisitions (hardship and protection) shall not influence the later environmental process for the project, including decisions relative to the need to construct the project or the selection of specific alternative locations.

17.04.03.03 **Hardship**

A hardship is defined as a situation where unusual personal circumstances accrue to an owner of property and are aggravated or perpetuated by reason of a pending transportation facility purchase and cannot be solved by the owner without acquisition by the LPA. See Chapter 5, “Corridor Preservation, Hardship, and Protection,” of this Manual.

17.04.03.04 **Protection**

A protection acquisition is one required to prevent development of property in the path of a proposed project route that would cause higher acquisition and construction costs and relocation of people and businesses if deferred. See Chapter 5, “Corridor Preservation, Hardship, and Protection,” of this Manual.

17.04.03.05 **Dedications**

A dedication is the setting aside of property for public use, without compensation, as a condition prior to the granting of a permit to construct, a zoning variance, or a conditional use permit, etc. The project’s timing, i.e., when the additional right of way is required for the highway improvements, dictates whether the Department or the LPA (usually City or County) accepts title to the parcel at the time of dedication. The property owner will normally initiate the request to the LPA that triggers the dedication. Valid dedications can however be accepted throughout the project development process.

There are a number of situations in which dedications occur. Some examples are as follows:

1. When the additional right of way is required for highway improvements that are being constructed in conjunction with a developer’s project.
2. When LPAs require the dedication of property rights in conformance with the agency’s adopted General Plan. In these cases, in exchange for permits, variances, or land use changes, LPAs require the dedication of property to the setback or the ultimate right of way line as reflected in their General Plan.

17.04.03.06 **Donations (Contributions)**

A donation is the voluntary conveyance of property, without compensation, for the improvement of a current or future public project. Donations of right of way may be accepted by nongovernmental owners if owners do so voluntarily and are advised of their right to compensation and their right to receive an appraisal report of the real property affected. The owner may waive either of these rights and release the LPA from such obligation. The waiver of just compensation or appraisal must be documented. Exhibit 17-EX-8 has been approved for this purpose and should be used whenever donations are offered and accepted. The offer to donate should originate with the property owner and must not in any way result from an act of coercion or suggestion by the LPA. Property owners who offer to donate should be advised of their right to reserve airspace development rights.

Donations may be made at any time during the development of a project. However, any document executed to effect a donation prior to approval of the environmental clearance of the project shall clearly state that:

1. All alternatives to a proposed alignment will be studied and considered.
2. Acquisition of property shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and
3. Any property acquired by donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after completion of the environmental clearance and public hearing, if required.

Once the environmental and route location process requirements are satisfied and regular right of way activity is under way, donations may be accepted by the acquiring agency as part of their regular acquisition program, provided the restrictions referred to above are followed.

17.04.03.07 **Donations as Local Match**

The fair market value of donations can be considered eligible as local matching funds whenever federal funds participate.

17.04.03.08 **Advance Acquisition - Procedures**

LPAs making such acquisitions are encouraged to use Department procedures to consider and evaluate advance acquisition requests in conformance with state and federal criteria. All decisions to acquire under these guidelines should be thoroughly documented. Also, if the environmental and route location processes have not been completed, the advance acquisition must not influence the environmental assessment of the proposed project, nor can they influence the decision relative to the need to construct the project or the selection of a specific location.

All advance acquisitions must comply with Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended April 2, 1987.

17.04.03.09 **Projects Before Environmental Clearance**

A request to acquire hardship or protection acquisitions prior to completion of environmental clearance requirements must be authorized in advance by FHWA's regional office if FHWA has already approved the project with the proposed acquisitions. This prior FHWA approval for the advance acquisition is required even if the right of way costs will be paid with the LPA's own funds and the project will later be programmed for federal-aid construction costs.

Close cooperation and communication between the Region/District R/W Coordinator, the DLAE, and the LPA are necessary in order to ensure that eligible costs are neither prematurely submitted for reimbursement nor overlooked entirely when they in fact become eligible for reimbursement.

17.04.03.10 **Projects with Environmental Clearance**

LPAs may acquire hardship or protection acquisitions with their own funds on projects that are environmentally cleared, but are not listed or approved by FHWA in the annual FTIP without jeopardizing federal participation in future programmed project costs. These advance acquisitions do not require prior FHWA approval; however, the acquisition activities must be performed in accordance with the Uniform Act and other requirements as stated earlier.

17.04.03.11 **Acquisition of Excess**

To avoid involvement in an excess lands disposal program, districts as a general rule should not acquire or accept title to future excess land in the Department's name in conjunction with the acquisition of the rights of way on special funded projects. If the excess is acquired, the acquisition should be via a second deed vesting the excess land portion in the LPA. Where right of way lines are indefinite, excess may be acquired in the Department's name with the understanding that all excess land acquired by the state will be deeded back to the LPA for their disposal upon completion of the highway construction.

17.04.03.12 **Sale or Exchange of Excess Property**

Special funded projects may involve the acquisition of property that becomes excess to Department needs as a result of interchanges being removed or reconfigured, ramps being relocated, etc.

Streets and Highways Code Section 118 permits the Department to sell or exchange right of way when it is determined that the property is no longer needed for highway purposes. On these projects, in the furtherance of our partnership approach, it is the Department's policy to cooperate with the LPA sponsor in making possible the exchange of state excess for property acquired by the LPA.

A valuation of the property involved will be completed by the Department's Right of Way. The value of the property acquired for state highway improvements should normally be of equal or greater value than the value of state excess property to be exchanged. If the state excess has greater value, the entities should normally pay the state the cost difference. However, the value of the state highway facility improvements financed by the entity may be factored in to exchange values if it is in the best interest of the state.

The real property exchange should be considered during early stages of project development whenever possible and addressed in the appropriate project development document (PSR, PSR/PR, etc.). Terms and conditions of the property exchange should be included in the Cooperative Agreement. The property exchange is subject to CTC approval.

NOTE: Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess real property.

17.04.04.01 **Utility Relocation**

In order to ensure utilities are relocated in timely fashion, it is crucial that early liaison be established between the utility companies and the design unit. This early involvement will help determine where potential conflicts exist, where possible design changes would preclude the need to relocate the utility and, if utility relocation is required, allow the utility company to budget the necessary staffing and capital outlay required to carry out the relocation activity on a schedule compatible with the project certification requirements.

Utility relocation can commence after the environmental document is approved and continue concurrently with the property acquisition process. It normally also continues through the construction process. All utility relocations must comply with state and federal laws and conform to Department specifications. For additional discussion, refer to Chapter 13, "Utility Relocation," in this Manual and Chapter 14, "Utility Facilities," in the *Local Assistance Procedures Manual*.

17.04.04.02 **Utility Master Agreements**

The Department has entered into master agreements with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These agreements are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects on the SHS no matter what the source of project funds or the agency responsible for project design. The only exception is when the freeway improvement project is an LPA-imposed mitigation requirement arising as a result of developer request for property improvement. In this case the developer will be responsible for all utility relocation costs in accordance with applicable case law.

17.04.04.03 **High/Low Risk Utility Facilities**

All underground high and low risk utility facilities within the State Highway rights of way shall be handled in accordance with the Department's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way." The LPA's Project Engineer must complete the Certification required by the policy.

17.04.04.04 **Agreement for Positive Location of Underground Utilities (Pos-Loc)**

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that calls for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

Please refer to the Right of Way Utilities Web site at <http://www.dot.ca.gov/hq/row/utility/> for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocation," of this Manual.

17.04.05.01 **Cooperative Agreements**

After the PSR is approved, the LPA(s) and the Department jointly develop and execute a Cooperative Agreement(s) which contains all the respective responsibilities and funding roles for the various phases of project development and construction. All special funded projects on the SHS with construction costs *greater* than \$1,000,000 require Cooperative Agreements.

NOTE: Projects with construction costs *less* than \$1,000,000 can also be quite complex due to funding or other factors. In these cases, entering into a Cooperative Agreement is often the only practical way to adequately memorialize the respective agreements and responsibilities, and the \$1,000,000 threshold figure should be ignored.

17.04.05.02 **Preapproved Clauses**

The Cooperative Agreements Manual stresses the use of standard, preapproved clauses because the review and approval process is shortened. Because of the extensive number of preapproved clauses dealing with a wide range of circumstances, many Cooperative Agreements can be finalized using standardized wording.

It is however inevitable that some Agreements will be necessary where special or "custom tailored" clauses are required, particularly for tax measure projects, which often have unique features. When these changes are made to standard clauses, a more lengthy review process is required. In these situations great care must be given to ensure the clauses are worded so that no unauthorized legal or binding commitment is made on behalf of the Department. Headquarters Local Programs should be consulted if there are any questions concerning this issue. (See below, Sections 17.04.09.01, "Condemnation for LPA Projects," and Section 17.07.00.00, "Cooperative Agreements.")

17.04.05.03 **Local Programs/Planning and Management Coordination**

The procedures and responsibilities for the preparation of Cooperative Agreements vary from Region/District to Region/District. Most Regions/Districts have a Cooperative Agreement Coordinator. Regardless of which process is followed, one recurring problem has been the failure to track Right of Way's expenditures when the Department is performing any or all of the Right of Way work for the project, *either* as the state's contribution/share of the project costs *or* as reimbursed work. Problems typically occur when the functional responsibility passes from Branch to Branch (e.g., from Appraisals to Acquisition). It is crucial that each Region/District have a responsible Right of Way Project Coordinator/Administrator to track the monthly/total expenditures for each project from the inception of the Right of Way activities. Some of the responsibilities are to ensure that each Cooperative Agreement is current and adequately funded. If additional resources are needed, the Cooperative Agreement must be amended. If resources have been exhausted, all right of way activities must stop and cannot continue until an amendment has been executed and additional resources secured.

17.04.05.04 **Capital Support Reimbursed Work**

The Region/District's Right of Way staff may perform work for LPAs on Locally Funded projects on the State Highway System and be reimbursed pursuant to a Cooperative Agreement. Any new or revised Cooperative Agreements for reimbursed work require individual approval from your Deputy District Director for Program and Project Management.

Each Region/District has an allocation of reimbursed Capital Outlay Support for the current fiscal year. The allocation lists both the District's work and work done for the District by the Division of Engineering Services and other units. Each District may enter into new or revised agreements for reimbursed work as long as no agreement increases the total reimbursed work on its projects in any future year above its current allocation. The District may submit these agreements to the Cooperative Agreement Branch in the Division of Design with a statement signed by its Deputy District Director for Program and Project Management, stating "This agreement will not increase the level of Capital Outlay Support reimbursed work on District _____ projects in any future year to a level above the current allocation. This includes work by the Division of Engineering Services and other units that work on the District's projects." The Cooperative Agreement Branch will process your agreement if it has this signed statement. If a proposed cooperative agreement would lead to an increase in the total reimbursed work on your projects in any future year, please contact your counterparts in the other Districts to determine if they expect a commensurate decrease. You may trade future reimbursed work. The new Department policy for performing reimbursed work is set forth in Project Management Directive (PMD-010), *Capital Support Reimbursed Work*, dated December 21, 2001 (Exhibit 17-EX-9).

17.04.05.05 **Reimbursed Supervision**

On some locally funded projects, when the appropriate approvals provided for above have been obtained, the Department will provide supervision of an LPA's right of way activities. In this context, reimbursed supervision includes providing the necessary review and approvals to complete the Right of Way phase of the project.

NOTE: The difference between the Department (or a prequalified LPA) providing "oversight" and "supervision" involves the *approval* of work products. These review/approval responsibilities must be included in the Cooperative Agreement.

17.04.05.06 **Final Design/Plans, Specifications, and Estimate (PS&E)**

The final design and PS&E must be approved by the Department and must conform to Department standards and practices.

17.04.05.07 LPA Qualification Requirements

Prequalified LPAs may perform the right of way functions for which they have been approved. Nonqualified LPAs must either use a prequalified LPA or retain the services of a qualified private sector consultant. (See Section 17.05.00.00, “Local Agency Qualifications,” and Section 17.06.00.00, “Consultant Qualifications.”)

17.04.06.01 Special Funded Projects - Duties

In addition to the general duties described at Section 17.02.04.03, other Right of Way duties may include the following:

- A. Coordinating with the Region/District Planning and Management Branch to ensure that all special funded projects are included in PMCS/XPM and are updated as necessary on the Status of Projects report.
- B. Coordinating/assisting in the preparation of the Project Study Report, the Project Report, cost estimates, etc.
- C. Coordinating/assisting with the preparation of Cooperative Agreements or Highway Improvement Agreements.
- D. Coordinating the Department’s line functions (e.g., appraisals, acquisition, relocation, etc.) when their assistance is necessary in performing oversight or when the state performs these functions as reimbursed work.
- E. Providing oversight during the right of way phase (if these functions are performed by others) to ensure that all right of way activities and “deliverables” conform to state standards. [See Section 17.04.06.02, “Oversight (Quality Assurance).”]
- F. Accepting the Right of Way Certification. (See Section 17.08.00.00, “Project Certification.”)

17.04.06.02 Oversight (Quality Assurance)

The Department, as the ultimate owner-operator of the SHS, will always be liable for maintenance and operation of the System and retains tort liability once the completed project has been accepted. Furthermore, as also discussed above, on special funded projects, the Department plays an active role in the project development process. Department approval is required for the Project Report and the PS&E. The Department usually prepares the environmental document (which may require extensive Right of Way involvement). During the right of way phase, we are very much concerned with the quality of the work product and therefore with the qualifications of the parties performing this work. It is therefore in our best interest to become as involved in the projects as staff time permits. Project sponsors, whether LPAs or private entities, are responsible for funding these projects, but often need Department involvement to become familiar with the development process and requirements. For our purposes here, this involvement is referred to as oversight. The Department funds its oversight activities on special funded projects unless the project is privately sponsored. On private projects, the project sponsor is responsible for the cost of oversight.

Oversight is a more intensive level of staff involvement than the monitoring discussed in the previous section. LPAs negotiating Cooperative Agreements should be made aware as early in the process as possible that Department staff will play a more active role in reviewing the right of way activities for the project. (See Exhibit 17-EX-11, “Functional Responsibilities,” for Monitoring and Oversight.)

Oversight responsibility begins with providing the LPAs all applicable manuals, handbooks, guidelines, etc., containing the federal and state requirements and regulations. It can include assistance in preparing and reviewing the Project Study Report, maps, cost estimates, R/W data sheets, utility relocation arrangements and schedules, and any other requirements for the project. It can also include qualifying LPAs to perform their own right of way functions and assisting nonqualified LPAs to retain qualified consultants. Of particular concern to the state, oversight should include the review of a representative sampling of “deliverables,” i.e., right of way maps, appraisals, acquisition files (deeds, contracts, diaries, etc.), RAP files (claims, payments, diaries, etc.), and review and acceptance of the LPA’s R/W Certification.

Oversight responsibilities extend beyond the project certification and include whatever efforts are necessary to ensure that the right of way acquired for the project is properly conveyed to the Department and that our requirements are satisfied pertaining to system integrity (e.g., title, description, and monumentation).

17.04.06.03 **Expenditure Authorizations - Oversight**

As noted above, each special funded project will be the subject of a Cooperative Agreement. (See Section 17.07.00.00, “Cooperative Agreements.”) When the Agreement is being developed and in particular after the Agreement is approved, the Local Programs’ role is *usually* one of oversight. Each Cooperative project will have an Expenditure Authorization (EA) assigned. Time spent performing oversight functions must be charged to the project EA, along with the appropriate FA, AO, and MSA codes. Each time oversight work is performed, the MSA code should be preceded by an “O” for Oversight (not a zero). Local Programs staff may be involved in activities from a project’s inception through the end of construction. Consult Division of Right of Way’s Time Charging Manual for appropriate time charging codes.

17.04.07.01 **Special Funded Projects - Appraisals**

Purchase of the required right of way can be made only after a written appraisal of its market value has been made and approved. On federally assisted projects, Code of Federal Regulations (49 CFR 24.104) requires an appraisal review process which at a minimum:

- A. Requires a qualified reviewing appraiser review the appraisal to assure it meets applicable appraisal requirements and shall, prior to approval, obtain any necessary corrections or revisions.
- B. If the reviewing appraiser is unable to approve or recommend approval of the appraisal as an adequate basis for the establishment of just compensation and it is not practical to obtain an additional appraisal, the reviewer, acting as reviewing appraiser, may develop appropriate appraisal documentation to support an approved or recommended value.
- C. Requires a signed statement, which identifies the appraisal report reviewed and explains the basis for such recommendation or approval. In addition, any damages and/or benefits to the remainder must be identified in the statement.

17.04.07.02 **Dual Appraisal Requirements**

The Department requires dual appraisal reports for unusually complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to the realty, severance damages, and construction contract work. This is to ensure that the owner receives just compensation and those large or complicated appraisals are documented and conclusions supported.

Dual appraisals shall be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer.

17.04.07.03 **Waiver of Dual Appraisals**

The majority of requests for waivers of the dual appraisal requirements are based on either the desire to save project funds by using only one appraiser, or the need to keep a project on schedule by avoiding the time required to perform a second appraisal. It is seldom that either of these two reasons runs to the benefit of the property owner. Waivers of the dual appraisal requirement should only be approved for relatively simple appraisals with adequate supporting data for the value conclusions and will ordinarily not be approved on high valued parcels. Waivers that are requested retroactively, i.e., after completion of the first appraisal or after the initiation of negotiations, should not be considered. Section 7.01.00.00 in Chapter 7, "Appraisals," in this Manual contains the Department's requirements for dual appraisals.

17.04.07.04 **Waiver of Dual Appraisals (Measure Projects/100% Locally Funded) - Discussion**

Dual appraisals are required for parcels expected to exceed \$500,000 in value or which involve complex or controversial appraisal problems. There is an exception process discussed above that provides for waiver of dual appraisals.

For measure projects, the final decision on the question of dual appraisals should rest with the measure authority.

It is our responsibility to point out those appraisal situations where it may be prudent or helpful to have two appraisal opinions. It is the measure authority management's responsibility to decide if they are comfortable with only one appraisal when the values may be several hundred thousand dollars of measure money, compared to the cost of a second appraisal.

The measure authority staff should be made aware of potential dual appraisal situations as soon as we become aware of them. After discussing each situation with the measure authority, the Department file should be documented as to their decision whether dual appraisals will be needed. If the Department is doing the appraisal work for the authority on a reimbursed basis and they decide that only one appraisal is needed, we would prepare only one report. If the work is being done by consultants, this decision would mean the LPA would only contract for one report.

NOTE: For additional details and a description of the appraisal requirements, please refer to Chapter 7, "Appraisals," in this Manual.

17.04.07.05 **Access Control - Private Property Benefits**

Access control changes that directly benefit or serve private property require that compensation be paid for the increased value of the property. The incremental value is determined by a "before and after" appraisal of the property. In the event the private property owner is required to pay for any necessary highway modification or project mitigation measures to provide the new access, a credit offset against the increased value equal to the cost of such highway work will be allowed.

In no event will the compensation be less than the larger of (1) the increased benefit to the private property by reason of the improved access, or (2) the cost of public highway modifications that are required to accommodate the new access, plus any other costs to the state.

17.04.07.06 **New Public Road Connection - Benefits**

If the proposed access opening or modification is for the purpose of allowing a new public street connection, compensation as defined above will be required unless the street clearly serves a public purpose and there are no abutting private properties that would receive a benefit due to increased development potential.

NOTE: For additional discussion of these policies, refer to Chapter 27 of the *Caltrans Project Development Procedures Manual*.

17.04.08.01 **Special Funded - Acquisition**

Upon request by the Department, a city may acquire property for state highway purposes and may take title in the name of the state or the city (Streets and Highways Code Section 113). A similar power is granted to counties under Streets and Highways Code Section 760.

In general, there are no comparable legislative provisions authorizing transit/transportation/measure authorities to acquire property by condemnation or take title to property acquired for state highway purposes. In the absence of specific statutory authority, local traffic authorities do not have power to take title to real property to be used for state highway purposes. Conversely, the state is not authorized to take property by eminent domain in the name of the traffic authority.

17.04.08.02 **Acquisition Settlements**

The decision as to the most effective way to acquire the necessary rights of way is the responsibility of the LPA. The Department's *usual* role is limited to oversight. Within this context, LPAs can establish their own criteria for determining administrative authorizations and/or settlement amounts, exchanges, etc. The Department's role is to ensure that such acquisitions are in conformance with the Uniform Act and that such actions do not deprive the property owner of just compensation.

Whenever the Department is performing acquisition for an LPA on a reimbursed basis and an administrative settlement or statutory offer is proposed, the LPA must be involved in and approve any amount over the approved appraisal.

17.04.09.01 **Condemnation for LPA Projects - General**

The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located. If the county or city elects not to undertake this activity on behalf of another LPA (e.g., a Transportation Authority), then the Department should assume this task. The cost for providing legal services is reimbursable and the requirement for this service must be included in the Cooperative Agreement or Right of Way Services Agreement. In addition, prior budgetary authority for reimbursable work must be obtained.

17.04.09.02 **Condemnation Responsibilities - Caltrans**

Following are the usual responsibilities of the respective parties whenever the Department undertakes legal services for the acquiring agency and which must be included in the Cooperative Agreement:

- A. Legal opinions and advice in all matters relating to the right to acquire the property for the project or to the valuation of said property.
- B. Department will obtain the necessary Resolution of Necessity from the CTC, or other appropriate body.

NOTE: Procedures have been established by the CTC which precede the adoption of Resolutions of Necessity. These Resolutions are adopted only after a series of hearings with the property owners where they are given the opportunity to contest the taking of their property for the project. These hearings, referred

to as First and Second Level Reviews, extend the time required to initiate the condemnation process. Department policy requires a First, and if necessary, Second Level Review prior to seeking a Resolution of Necessity. This policy applies regardless of whether the Department and/or a Local Agency perform the R/W effort, or what body hears the RON request.

In all cases, regardless of whether the R/W effort is performed by the Department and/or a Local Agency, First and Second Level Reviews will be administered by the Department under the direction of Region/District R/W staff as outlined in Chapter 9, "Condemnation," of this Manual. When a Local Agency is involved in the acquisition of right of way, Local Agency staff shall participate in the First and Second Level Reviews as necessary. (Also see Exhibit 17-EX-10 in this Chapter.)

- C. Attorney services in connection with selection of witnesses for trial, the preparation and conduct of the trial, posttrial motions and appellate proceedings in condemnation cases for the acquisition of property or actions to acquire possession of property.
- D. Attorney services as necessary or required for property management and/or relocation assistance proceedings.

17.04.09.03 **Condemnation - General - LPA Responsibilities**

In preparation for condemnation, the LPA will *normally* provide the following:

- A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.
- B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.
- C. An adequate legal description of the property.
- D. Right of Way/Parcel maps as required for condemnation complaints.
- E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the CTC to contest the necessity for the taking.
- F. Documents necessary to deposit the just compensation with the State Treasurer.
- G. Necessary information for obtaining orders of possession.
- H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.
- I. An authorized representative from the LPA who will appear at the hearing before the CTC to adopt the Resolution of Necessity.

17.04.09.04 **Condemnation Trials - LPA Responsibilities**

In preparation for trial, the LPA will *usually* provide the following:

- A. A copy of the LPA's staff appraisal report.
- B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.

- C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.
- D. All maps, exhibits, and photographs required for trial.
- E. Expert appraisal witnesses, subject to prior approval by the Department's Legal Division. All witnesses shall be made available to Legal for preappraisal and presubmission meetings to ensure they are proceeding on legally proper grounds.
- F. If private sector consultants are used, service of the LPA's acquisition consultant to assist Legal at the trial, to the extent that Right of Way Agents typically provide such services.

The LPA is also responsible for depositing sufficient funds with the Department to cover jury fees, deposits of probable just compensation for orders of possession, all trial preparation costs such as witness fees, deposition fees, and attorneys' fees.

17.04.09.05 Condemnation - Cooperative Agreement Requirements

The following provisions should also be included in the Cooperative Agreement:

- A. Department attorneys reserve the right to use LPA's "staff" or consultant appraisers at trial or to select their own appraisal witness for trial, whichever in the attorney's judgement appears to be in the best interests of the Department and the LPA.
- B. The process for obtaining resolutions of necessity (e.g., either by the CTC or by the LPA) shall be reviewed by the Department to ensure all preliminary requirements have been met.
- C. The LPA will take steps to assure close coordination and exchange of information between consultants performing the acquisition and those providing relocation assistance services.
- D. The LPA has final approval authority on negotiated settlements of condemnation cases and will provide a representative with authority to approve settlements for all settlement conferences. The LPA will consult with and consider recommendations of Department attorneys in connection with all proposed settlements.
- E. If the appraised value provided by the Department's condemnation appraisal witness is more or less than the LPA's appraisal or outstanding offer, the LPA will consult with Department attorney prior to withdrawing a previous offer or offering a larger settlement amount.

17.04.10.01 Property Management - Income

Pursuant to Streets and Highways Code Sections 104.6 and 104.10, twenty-four percent (24%) of the gross rental income derived from property acquired in the state's name is to be transferred to the county in which rental income is derived. These sections are applicable whenever property is vested in the state's name regardless of the source of money to acquire the property and who will provide the property management services to the LPA. Pursuant to Streets and Highways Code Section 104.13, the Department is responsible for the payment of possessory interest taxes on leased property held for future state highway needs and for excess lands. All funds distributed to a county (24%) pursuant to Section 104.10 are considered to be the full or partial payment of the total possessory interest taxes due.

The above distribution of funds must be clearly detailed in the Cooperative Agreement or Right of Way Services Agreement with the LPA, particularly in situations where another LPA is acting as an agent for the Department in providing the property management services.

If Department is providing the property management, the balance of gross rental receipts (less adjustments for possessory interests and/or 24% allocation) will be transferred to the LPA. Costs incurred in conjunction with property management activities are reimbursable costs and will be part of the advance deposit for estimated support costs. The LPA will not be paid interest on rental income.

17.04.11.01 **Local Agency Relocation Assistance Appeals Process**

Whenever the LPA is proposing to do their own relocation assistance work, they must have an appeal process that meets the Uniform Act/CFR requirements and is approved by the Department.

The District must approve the process and the Appeals Board members or hearing officers designated by the LPA. The submittal to the Department should include the following:

1. Assurances that all persons receiving relocation assistance will be advised of their right to appeal.
2. The names and qualifications of prospective members of an Appeals Board or appeal review officers. (Note: Appeals Board members should not be persons who are involved in the relocation claims process nor any supervising persons involved in the claims process.)
3. The LPA's plan for hearing appeals in a timely manner and advising the appellant of the outcome of the hearing.
4. Assurances that all appellants who do not receive the total relief requested will be advised of their right to seek judicial review.

17.04.12.01 **Project Certification**

The LPA sponsor is responsible for certifying that physical and legal possession of the necessary right of way has (or will be) obtained, that all occupants have vacated the property, and that all acquisition and relocation activities comply with applicable state and federal laws. For an additional discussion of the Certification process, see Section 17.08.00.00, "Project Certification," and Chapter 14, "Project Certification," in this Manual.

17.04.13.01 **Acceptance of Title by Caltrans**

The LPA sponsor is responsible for delivering title to the right of way acquired for the project to the Department free and clear of all encumbrances detrimental to Department's present and future uses.

The Department will accept the completed special funded project into the SHS, provided the project was approved and that right of way was acquired in accordance with Department practices. See *Guidelines for Local Agency Involvement in Right of Way Acquisitions and Delivery of Projects on the State Highway System*, dated December 10, 2001 (Exhibit 17-EX-10). To ensure compliance, the following procedures have been adopted:

A. LPA-Sponsored Projects (Public Projects)

1. The LPA prepares and submits to the Local Programs Coordinator the acquisition documents (Right of Way Contract, Grant or Easement Deed, escrow instructions, etc.) for each acquisition transaction.
2. The Coordinator reviews and approves the transaction and arranges for the authorized district right of way representative to acknowledge acceptance of the deed.

3. Upon acceptance, the Region/District will submit the Deed and escrow instructions to the title company.
4. The title company, upon receipt of a check from the LPA (or the Department, if appropriate), will close escrow, issue a policy of title insurance as in the amount specified in the escrow instruction letter, and record the deed vesting title in the LPA or state, free and clear of all liens and encumbrances except as otherwise stated.

B. Private Developer-Sponsored Projects (Private Projects):

1. The Developer acquires the necessary rights of way with title vested in the developer's name.
2. The Developer provides the Department, prior to the issuance of an encroachment permit, a Right of Way Certification and acquisition package consisting of a Grant Deed vesting title in state's name, a Policy of Title Insurance, and escrow instructions for each parcel acquired.
3. R/W reviews the certification and acquisition package(s) and prepares a Memorandum of Settlement.
4. R/W confirms that the certification and acquisition documents are correct, signs R/W Certification, and notifies the Encroachment Permits Branch.
5. The state grants the encroachment permit to developer.
6. Prior to acceptance of the completed project by the Department, the Grant Deed conveying title to the state is recorded and a policy of title insurance naming the state is issued.

17.04.14.01 Assessment Districts

In order to minimize future controversy, in cases where LPAs wish to utilize assessment district procedures in acquiring rights of way, the following procedure has been established:

A. Requirements for Prior Department and FHWA Approval (Where Necessary)

For each project where the local share is to be provided by an assessment district (construction and/or right of way reimbursement), the LPA sponsor shall receive prior Department approval of its intended assessment district procedures. If the project has federal aid, FHWA approvals are also required.

B. Procedure for Securing Approval

At the field review stage, the LPA seeks the Department and FHWA's approval (when necessary), submitting its intended assessment procedures and a description of the method its valuation engineer will use to determine individual assessments.

The District forwards the assessment procedures to Headquarters for approval.

The request, when appropriate, is then forwarded to FHWA for approval. Each level of approval should be obtained before Right of Way activities are commenced.

C. Criteria to be Used in Granting Approval

The following criteria will be used by the Department and FHWA (where appropriate) to determine whether the proposed assessment district is consistent with the requirements of 49 CFR 24.A-C.

1. All property to be acquired must be appraised in accordance with existing procedures.
2. The assessment may not be made on a formula which would automatically increase an owner's share if the owner successfully secures a higher payment through the judicial or negotiation processes.
3. An assessment must be based on a relationship attributable to the special benefit each individual property owner receives and not by the costs and amount of right of way acquired. A consistent method of assessment will be done on a districtwide basis.
4. The inclusion of severance in deriving the method of assessment may conflict with the concept of all properties being benefited by the project unless the damages are offset by benefits, as actually determined, in an after condition.
5. Funds received from property owners in the assessment district cannot duplicate Federal funds to be applied to the highway project, but must be limited to the local share of the total project cost.

NOTES: